6 December 2017

Ian Wilson

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**First Gas additional drafting Agenda Items A - E**

Dear Ian,

Thank you for the opportunity to comment on the additional drafting provided by First Gas.

**Liability**

1. In the synopsis provided by FGL in its memorandum in respect of Action Item D made mention of clarifying:

* *First Gas will use reasonable endeavours to identify the party at fault and pass on information to the party suffering loss;*
* *First Gas will assist with the process, pass on information, but need not be involved in defending the claim; and*
* *If a party is identified by First Gas as being at fault, First Gas will pass on information about the defending party to the shipper for them to pursue the defending party to recover loss*.

1. However, we found no provisions that matched these statements in the mark ups provided. It may be that FGL intends to include these provisions in its December 8 draft but if not then these need to be addressed.
2. In addressing the issue of subrogated claims with the new 16.12, the proposal made by FGL continues to consider only Shippers and ignores the issue of claims that may need to be made by/against Interconnected Parties. We believe the GTAC as it stands doesn’t allow all parties using FGL’s network to follow a clear chain of liability in all circumstances.
3. While the new clause 16.12 goes some way to addressing the flow of liability between a breaching party and the party that suffers loss, it is incomplete. Given the various limitations and exclusions in the Code (clauses 12.10, 16.1 and 16.3 by way of example), in order for such a provision to be effective the losses incurred by a party that is harmed needs to be deemed to be FGL losses and any potential recovery by FGL should not be jeopardised by the breaching party being able to argue that FGL can itself avoid liability on the basis that it can invoke a limitation or exclusion that would not be available to the breaching party. For instance, if a party was to under-inject into the transmission system in breach of its obligations to FGL and as a result of that under-injection FGL was forced to curtail other parties causing those other parties significant loss, the breaching party should not be able to avoid liability in respect of those third party losses simply because FGL was acting as an RPO in curtailing those third parties. FGL must be satisfied that its solution will always allow the Shipper (or Interconnected Party under the relevant ICA) that suffers loss as a result of a breach of the Code by another Shipper (or breach of another ICA by another Interconnected Party) to recover that loss subject only to the caps.

**Agreed Hourly Profiles (“AHP”)**

1. In clarifying the application of Agreed Hourly Profiles, Methanex is concerned that FGL will allow the use of AHPs, and peaking tolerances around those profiles, far beyond the legitimate extent of such a mechanism, particularly where it places no cost upon the party benefiting from the use of an AHP.
2. Although FGL has replaced the term “may change substantially from Hour to Hour” in section 7.1 with “unusually variable”, it remains unclear to Methanex as to whether FGL intends to allow a wide application of AHP to provide End-users with peaky load to use AHPs on a frequent basis at no cost. If this is the intent, it conflicts with the principle previously put forward by FGL to “ensure peaky loads pay more for their disproportionate effects”.
3. Methanex considers that the parameters for approving AHPs should be tightened and/or those who benefit from the regular use of AHPs should provide compensation for the use of that greater flexibility.
4. Adding further to Methanex’ concern is the revised formulation of MHQ which provides a Shipper using an AHP with increased tolerance flexibility.
5. Based on remarks made by FGL in previous documents, it has indicated that:

* Specific HDQ/DDQ will be tailored to the profiles of each particular Dedicated Delivery Point; and
* The prospect that at particular Dedicated Delivery Points it might provide a Specific HDQ/DDQ that is higher than MDQ/16.

Methanex is concerned that the application of a case-by-case approach to setting Specific HDQ/DDQ combined with a permissive approach to permitted AHPs could be discriminatory, effectively favouring users with more variable loads than those with generally flat loads.

1. We consider that in contemplating Specific HDQ/DDQ higher than MDQ/16, together with AHP’s and providing a general exclusion of peaking liability at non-Dedicated Delivery Points, FGL will encourage increased peaking. This has implications for the stable management of the network in terms of line pack and pipeline pressure and raises the prospect that FGL would also seek to expand the capacity of the pipeline network to cater for the increased peaking (that is not necessarily priced to the causer).

**Interconnection Agreements**

1. In response to the mark-ups provided by FGL in respect to Section 7, Methanex reiterates it’s view that FGLs insertion of section 7.13 is no substitute for the proper incorporation of Interconnected Party rights and obligations within the Code. Section 7.13 is essentially a set of contract parameters rather than a comprehensive set of rules that provide parties certainty to the contractual regime they are required to sign up to with the monopoly provider of transmission services.

Yours sincerely

Phil Watson

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